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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

March 1, 2007

10:13 a.m.

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

1 CLAIMS Objection Hearing Regarding Claim of Eva Orlik

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3 CLAIMS Objection Hearing Regarding Claim of Joseph Reno

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5 CLAIMS Objection Hearing Regarding Claim of DBM Technologies,
6 LLC

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8 CLAIMS Objection Hearing Regarding Claim of Edith James

9

10 CLAIMS Objection Hearing Regarding Claim of Freddie L. Johnson

11

12 CLAIMS Objection Hearing Regarding Claim of Terrence Evans

13

14 CLAIMS Objection Hearing Regarding Claim of Thomas

15 Wimsatt/Donna Wilson

16

17 CLAIMS Objection Hearing Regarding Claim of Harold Woodson

18

19 CLAIMS Objection Hearing Regarding Claim of LaborSource 2000,
20 Inc.

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22

23

24 Transcribed By: Esther Accardi

25

1 A P P E A R A N C E S :

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7 BY: JOHN K. LYONS, ESQ.

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16 BY: HARVEY ALTUS, ESQ.

17 (Telephonically)

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23 BY: JUDE GORMAN, ESQ.

24

25

1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Delphi
3 Corporation.

4 MR. LYONS: Good morning, Your Honor. John Lyons on
5 behalf of the debtors. I have here with me --

6 MR. ALTUS: Harvey Altus on behalf of LaborSource
7 2000.

8 THE COURT: Okay.

9 MR. LYONS: And, Your Honor, I have Mr. Matz and Ms.
10 Diaz who are also seated at counsel table, and Ms. Kraft and
11 Mr. Unruh, as well, on behalf of the debtors.

12 THE COURT: Okay.

13 MR. LYONS: Your Honor, this is the fourth claims
14 hearing pursuant to the claims procedures that Your Honor
15 entered last December. And with Your Honor's permission, I'll
16 proceed through the agenda.

17 THE COURT: That's fine.

18 MR. LYONS: Okay. First on the agenda, Your Honor,
19 we have a number of adjourned matters that were original set
20 for hearing for today. And that would be the claim objection
21 to the claim filed by Eva Orlik. The claim objection filed
22 with respect to Mr. Joseph Reno. And then also a claim
23 objection pursuant to our fourth omnibus claims objection filed
24 with respect to DBM Technologies. Those three matters are
25 being continued to March 21st. We have continued the

1 mediations for the first two claims unsuccessfully, so it looks
2 like we may have a contested hearing for the Orlik claim and
3 the Reno claim on March 21st.

4 THE COURT: Okay.

5 MR. LYONS: Next, Your Honor, we have a number of
6 uncontested matters that were scheduled for hearing. I'm happy
7 to report that we were able to settle five of the six matters
8 that are currently pending for today. The claim of Leslie
9 James, asserted in the amount for 1.13 million, we've settled
10 that for 100,000 dollars. The claim filed by Freddie Johnson
11 was asserted in the amount of 300,000 dollars, we've settled
12 that for 15,000 dollars. The claim filed by Terrence Evans,
13 which was asserted in the amount of 300,000 dollars, has been
14 settled for 5,000 dollars. And when I say settled, I mean an
15 allowed general unsecured claim. The claim filed by Mr. Thomas
16 Wimsatt/Donna Wilson was asserted in the amount of 250,000
17 dollars, and the parties have agreed to settle that for 15,000
18 dollars. And then, finally, the claim filed by Mr. Harold
19 Woodson, filed at an undetermined amount, has been settled for
20 15,000 dollars.

21 THE COURT: Okay.

22 MR. LYONS: So upon execution of the settlement
23 agreements, Your Honor, we will forward to Your Honor
24 stipulations which will allow the claim in that amount and
25 waive any other claims.

1 THE COURT: Okay. Just when I do the amounts, you
2 don't need to notice any of those then, right?

3 MR. LYONS: No. These have all been settled pursuant
4 to the settlement procedures order.

5 THE COURT: The amounts are below the caps where you
6 would need to notice them?

7 MR. LYONS: Correct.

8 THE COURT: All right.

9 MR. LYONS: So those will be forthcoming shortly,
10 Your Honor.

11 THE COURT: Okay.

12 MR. LYONS: Your Honor, that brings us all the way to
13 the only contested matter for today, and that is the claim
14 objection hearing regarding the claim of LaborSource 2000, Inc.
15 Your Honor, we have had -- we filed the appropriate notices and
16 had the appropriate meet and confers as well as mediations with
17 respect to this claim. Counsel for LaborSource and I have
18 agreed to limit the record here to just what has been filed.
19 And there will be no live testimony or no cross-examination.
20 Parties have agreed to that, to just argue on basic legal
21 submissions.

22 THE COURT: Okay.

23 MR. LYONS: However, it will be, you know, on the
24 evidence, Your Honor. We do have -- we're asking Your Honor
25 not to review it under, you know, motion to dismiss standard,

1 rather, and enter a judgment on the merits.

2 THE COURT: So, for example, LaborSource is not going
3 to cross-examine the two declarants?

4 MR. LYONS: That's the understanding of the parties,
5 Your Honor.

6 THE COURT: Okay.

7 MR. LYONS: And just as a housekeeping matter, I
8 would like to introduce formally into evidence -- offer and
9 introduce into the evidence the declarations that we've filed
10 in connection with our brief. And also -- so that would be the
11 Robins declaration, the Hudson declaration and also the
12 certificate by Ms. Kraft, which attaches the standard terms and
13 conditions of the Delphi purchase orders as Exhibits 1, 2 and
14 3. So if I could offer those?

15 THE COURT: And that includes the exhibits to Robins
16 which are the agreements?

17 MR. LYONS: Yes, Your Honor.

18 THE COURT: Okay. That's fine. Those will be
19 admitted.

20 (Robins declaration was hereby received as Debtor's Exhibit 1
21 for identification, as of this date.)

22 (Hudson declaration was hereby received as Debtor's Exhibit 2
23 for identification, as of this date.)

24 (Certificate by Ms. Kraft was hereby received as Debtor's
25 Exhibit 3 for identification, as of this date.)

1 MR. LYONS: And as well, Your Honor, Mr. Altus can
2 just confirm, I do have the docket from LaborSource's Chapter 7
3 case. The case has been closed. The final decree has been
4 entered. If Mr. Altus would confirm that I could just stand on
5 that confirmation, otherwise we do have the docket sheet for
6 LaborSource 2000.

7 MR. ALTUS: Yeah, that case has been closed.

8 THE COURT: Okay.

9 MR. LYONS: Okay, Your Honor, that's all I need for
10 housekeeping. Your Honor, now I'm prepared to argue, if Your
11 Honor would like.

12 THE COURT: That's fine.

13 MR. LYONS: Your Honor, based upon the submissions
14 that we've made in our brief and including the declarations
15 that have now been introduced into evidence, Your Honor, we
16 respectfully submit that LaborSource's claim should be
17 disallowed. The well-settled standard for proof of claim is it
18 constitutes prima facie evidence of validity. Once rebutted,
19 the burden shifts back to the claimant to prove the -- to come
20 forward with evidence to prove the allowed ability of the
21 claim. We submit that our briefs and our declarations have
22 sufficiently rebutted that presumption. And, Your Honor, there
23 is not any evidence at all that has been submitted by
24 LaborSource to prove the validity of the claim. Indeed, the
25 only evidence that Your Honor has before it is the declarations

1 of Mr. Robins and Mr. Hudson which are uncontroverted and show
2 that no representations were made as alleged by LaborSource
3 2000 in their complaint of future business or evidence of
4 certain volume guarantees. Indeed, the contracts that Delphi
5 entered into with LaborSource were requirements contracts which
6 are pretty standard in the industry which again allow -- which
7 do not give any volume guarantees to a particular supplier due
8 to the fragile nature of the supply chain in the automotive
9 industry: GM, Ford, Daimler-Chrysler, at any time they
10 discontinue a product line and that flows down to the tier one
11 and the other tier suppliers. So that's why the structure of
12 these contracts in this industry are those of requirements
13 contracts, and it was no different here.

14 There are a number of merit base points, Your Honor,
15 and I'm not going to belabor them; I think we've adequately
16 briefed them in our brief. But there's a threshold issue as to
17 whether LaborSource even has standing to bring this claim in
18 light of its Chapter 7 case and the fact that a final decree
19 has been entered. And we've cited Your Honor a few cases,
20 including U.S. Dismantlement case, which says that once a
21 corporation goes to Chapter 7 and a final decree's been entered
22 it's a defunct corporation, it does not have standing to pursue
23 a pre-decree cause of action against another party. So for
24 that basis, we believe there's a threshold matter where
25 LaborSource's claim should be disallowed.

1 To the merits of the claim, Your Honor, all of these
2 purchase orders were made pursuant to Delphi's standard terms
3 and conditions. The purchase orders were fully integrated.
4 Said, you know, basically evidence the parties' agreement that
5 there were no other representations made except of that
6 contained in the purchase order. So, again, we think that is a
7 basis to disallow the claim.

8 Finally, the uncontroverted testimony of Mr. Robins
9 and Hudson confirms that no such promises were ever made to
10 LaborSource. So from an evidentiary standpoint, we believe
11 there's no basis for the underpinning of LaborSource's claim.

12 And then finally, Your Honor, the settlement and
13 release agreement which was signed in June 2004 actually
14 released Delphi from any pre-June 2004 potential claims by
15 LaborSource. Again, the purchase orders were entered into well
16 before June 2004. So on the basis of the release, there is no
17 claim against Delphi. And if there are any promises which, of
18 course, Mr. Hudson and Mr. Robins contest, if there were any
19 promises that were made after that release, the agreement and
20 the purchase orders required that those be in writing and there
21 are no such writings, Your Honor.

22 So for all these reasons, Your Honor, Delphi
23 respectfully submits that LaborSource 2000's claim should be
24 disallowed in its entirety.

25 THE COURT: Okay. Mr. Altus?

1 MR. ALTUS: Okay. Well, thank you for allowing me to
2 appear in this manner, first of all, Judge. I appreciate that.
3 I think what we have to do in a situation such as this is,
4 Judge, is recognize that this claim was started in the Michigan
5 Circuit Court and was probably be better suited as a state
6 lawsuit than as claim in bankruptcy. The reason being that for
7 our claim, we need to go beyond the written contract. Our
8 claim is premised upon nondisclosure misrepresentations, that
9 I'll mention, which resulted in my client submitting its bid to
10 begin with. Delphi did not disclose that there was a union
11 contract already in place when it first submitted its bid, that
12 the union contract was going to be binding or was expected to
13 be binding on my client, that there were already grievances
14 pending there with respect to the job that was at issue. This
15 was a job in Lansing, Michigan having to do with production of
16 certain automobile contracts for General Motors. So my client
17 came to an existing situation that it did not know about when
18 it submitted its bids and is something that we claim Delphi
19 should have at least informed them of instead of just submitted
20 a general bid request. My client bid for it and then found out
21 it was getting into something that it had no idea that it was
22 getting into.

23 Mr. Lyons described that there was a settlement and
24 relief agreement that was entered into between the parties
25 later on when it was discovered that basically my client was

1 going to go out of business if it did not receive some relief.
2 And as to that document, Your Honor, I think that was more a --
3 I think our claim as to that document is that it was more of a
4 claim of adhesion. My client had little choice but to sign
5 that document. It got a little bit of relief from Delphi but
6 it was certainly not enough to keep them in business. And my
7 client had little choice but to sign that document, otherwise
8 it would have been out of business even sooner than it did go
9 out of business.

10 My client struggled along and kept the project going
11 until it finally did shut down. After which my client also had
12 to shut down, basically. And as a result of the omissions and
13 the misrepresentations, essentially the bullying of Delphi with
14 respect to a much smaller company and a much more vulnerable
15 company, my clients suffered a number of damages, not the least
16 of which that it was out of business and had to file Chapter 7.

17 There was personal cash liability accrued on behalf
18 of LaborSource 2000 of the amount of 200,000 dollars. There
19 were a number of bridge loans that they had to take out in
20 order to keep themselves running and keep themselves satisfying
21 what they felt to be their contractual requirements with
22 Delphi, and those were 160,000 dollars. There were a number of
23 additional damages relating to Workers' Compensation claims
24 that were about 65,000 dollars and a number of other, you know,
25 lost profits and so forth.

1 And so I think what the crux of our claim is not so
2 much reading the written contract and deciding on now, but
3 going beyond the written contract recognizing that Delphi
4 really did not fully disclose, in the first instance, what this
5 bid was all about. And then in the second instance with
6 respect to the settlement and relief, I think it must be
7 recognized that they had a couple of unequal bargaining parties
8 and my client was in a position basically where they had to
9 accept what Delphi was offering and that was it. And it was
10 not enough. It was enough to finish the project for Delphi but
11 it was certainly not enough to keep them in business
12 afterwards. And as a result, these other damages were
13 suffered.

14 THE COURT: I thought the project wasn't finished, I
15 thought it was terminated?

16 MR. ALTUS: I think General Motors -- it was finished
17 with respect to my client, I'm sorry. General Motors
18 terminated it earlier than was expected, but my client
19 completed its contractual obligation. GM may have terminated
20 it earlier, that part is true. But my client completed it.
21 They did everything that they were expected to do until the
22 project shut down.

23 THE COURT: Then how could there be damages for early
24 termination?

25 MR. ALTUS: The project was supposed to be completed

1 through, I believe it was the end of 2005. It was not expected
2 to be terminated early by General Motors. This was also
3 something that was not explained to my client when they
4 initiated the bid process.

5 THE COURT: But if your client did all the work that
6 it was supposed to do, why would the subsequent termination by
7 GM affect its damages in any way, even assuming the validity of
8 this theory?

9 MR. ALTUS: Okay. My client was paid based upon a
10 certain dollar amount per hour for employees supplied to the
11 project. It was anticipated that a certain number of hours
12 would be worked. Delphi did not disclose, at the initiation of
13 the bid process, the amount of downtime that would be expected.
14 They were expecting to be working for a certain number of weeks
15 during the year and my client was expecting that number of
16 weeks during the year, and it did not happen.

17 My client was not advised also that General Motors
18 might actually terminate the contract early. Because they did
19 terminate the contract early, again, my client was not afforded
20 the expected number of service hours. And as a result, lost a
21 certain process and --

22 THE COURT: Why shouldn't the parol evidence rule
23 apply here? Mr. Altus?

24 MR. ALTUS: I'm sorry, I thought I lost you there for
25 a second.

1 THE COURT: Why shouldn't the parole evidence rule
2 apply here?

3 MR. ALTUS: As I stated before, I think the case was
4 much more conducive to the state lawsuit that was started.

5 THE COURT: Well, doesn't Michigan law recognize the
6 parole evidence rule?

7 MR. ALTUS: Well, it does. But I think it goes
8 beyond that, Judge. I think our claim goes beyond, like I
9 indicated, that misrepresentation and omissions in the first
10 instance and then the unequal bargaining power of the parties
11 when it came to the settlement and relief that occurred on down
12 the road.

13 THE COURT: Okay. All right. Anything further by
14 either side?

15 MR. LYONS: Just a note, Your Honor. The settlement
16 and combination agreement, the last paragraph does reflect
17 that -- and it's paragraph 15, Your Honor. It says
18 "consultation with counsel of the parties hereto acknowledge
19 that they have been given the opportunity to consult with
20 counsel before executing this agreement. And they are
21 executing such agreement without duress or coercion or without
22 reliance and any representations, warranties or commitments
23 other than those representations, warranties and commitments
24 set forth in this agreement and the purchase order." And I
25 think, Your Honor, it's clear that LaborSource 2000 was

1 represented by counsel with respect to this agreement. So I
2 think that would cut against this adhesion theory. And again,
3 Your Honor, although Mr. Altus has argued, there is no
4 evidentiary support for his arguments in the current record.

5 THE COURT: Okay. Is there any dispute that as far
6 as the written agreements are concerned, Delphi has performed,
7 has made the payments provided for in the written agreements?

8 MR. ALTUS: No, Judge, we can't dispute that.

9 THE COURT: Okay. All right. Okay. I have before
10 me the debtor, Delphi Automotives Systems, or DAS's, objection
11 to the proof of claim filed by LaborSource 2000, Inc. in this
12 Chapter 11 case. That claim asserts damages not under, but
13 extrinsate to agreements entered into by DAS and LaborSource
14 before DAS's Chapter 11 case and also before LaborSource's
15 Chapter 7 case.

16 The claim, essentially, is that under various
17 theories, Delphi owes LaborSource for lost revenue due to
18 unexpected downtime in providing personnel for a DAS project,
19 since under the contracts, DAS was obligated to pay only for
20 hours worked. As well as in respect to the early termination
21 of the project.

22 In addition, LaborSource claims that it is owed
23 increased Workers' Compensation premiums necessitated due to
24 unanticipated union requirements, 65,000 dollars in outstanding
25 employee medical bills resulting from the cancellation of

1 medical insurance that LaborSource could not sustain,
2 apparently, as a consequential result of the termination of the
3 project and the losses that LaborSource sustained under the
4 contracts. And 160,000 dollars of additional interest and
5 expenses for bridge loans that LaborSource sought to maintain
6 during the course of the project. In addition, it makes a
7 claim that pursuant to a unilateral proposal by Delphi to
8 various suppliers, including to LaborSource, to share the
9 savings of any cost savings ideas that the suppliers passed on
10 to Delphi, that LaborSource made a suggestion in response in
11 respect of something it called a job bank, without further
12 description, that Delphi used that suggestion and realized
13 savings therefrom. This claim is not quantified or provided
14 any further support.

15 The parties have agreed on the evidentiary record in
16 respect of this proceeding and I've reviewed it and have
17 concluded for a number of reasons, which I'll now go through,
18 that the claim is as DAS asserts and should indeed be
19 disallowed in its entirety. That is because DAS has provided
20 sufficient underpinnings and evidentiary support to rebut that
21 prima facie validity of the claim and consequently shifted the
22 burden of sustaining the claim to LaborSource and LaborSource
23 has not sustained that burden. As an initial matter, DAS
24 argues that LaborSource lacks standing to assert the claim in
25 the first place. The basis for that contention is that

1 LaborSource has gone through its own Chapter 7 case, which has
2 now been concluded, and the trustee in that case did not pursue
3 this claim. And, consequently, as a result of the conclusion
4 of the Chapter 7 case, LaborSource, under Section 7027 of the
5 bankruptcy code, not having received a discharge as a corporate
6 entity, is, as a result, a defunct entity without standing to
7 pursue claims on its own behalf.

8 It cites in support of its standing argument two
9 district court cases, U.S. Dismantlement Corporation v. Brown
10 Associates Inc., 2000 Westlaw 433971 Ed. PA, April 13, 2000,
11 and Liberty Trust Company Employees Profit Sharing Trust v.
12 Holt, In re Liberty Trust 130 BR 467, (WD Texas 1991). Those
13 cases adequately go through the rationale for the proposition
14 that a former Chapter 7 debtor whose case has been completed
15 lacks standing to assert on its own behalf any litigation
16 claims.

17 There's a surprising dearth of case law in this area.
18 And I note that there is at least one conflicting case also
19 from the Eastern District of Pennsylvania In re Fifth and
20 Mitchell Street Corporation 2001, Westlaw 34355652 ED
21 Pennsylvania, December 13, 2001. And I've reviewed that and
22 I've concluded that under these circumstances, this being a
23 Michigan corporation, which under Michigan law as a dissolved
24 corporation would still have the ability to sue and be sued in
25 its corporate name. See MCLS Section 450.1834(e) 2006. The

1 better view is that LaborSource would have standing to pursue
2 litigation here.

3 I note that in addition, while both U.S.
4 Dismantlement and the Liberty Trust cases refer to such a
5 former Chapter 7 debtor as a "defunct corporation" and refer to
6 and rely heavily on dictionary definitions of the term defunct,
7 which mean under those definitions that it is effectively dead
8 and no longer capable of acting on its own behalf. The code,
9 the bankruptcy code, itself, does not so characterize a former
10 debtor like LaborSource, it merely says that a corporate debtor
11 in Chapter 7 does not receive a discharge. Both those cases as
12 well as the Fifth and Mitchell Street Corporation case discuss
13 the rationale for not giving Chapter 7 corporate debtors a
14 discharge, which is that Congress wanted to prevent such
15 entities from selling their corporate shells as a tax avoidance
16 tactic. But that strategy can be fulfilled, I believe, equally
17 simply by recognizing that such an entity does not receive a
18 discharge since the debt would still exist and vitiate any
19 benefits obtained from trafficking in that corporate shell. So
20 while I understand the logic of the U.S. Dismantlement case, I
21 believe that here, where under Michigan law a dissolved
22 corporation has the ability to sue or be sued, that LaborSource
23 has standing.

24 I also note that there is obviously a possibility
25 that there being it appears at least no formal abandonment of

1 this cause of action by the Chapter 7 trustee, he or she could
2 conceivably seek to reopen the case if there was any merit to
3 the claim. And, therefore, it makes sense for me to address
4 the merits, in any event, since they are now briefed and
5 there's a factual record before me. On the merits, it's clear
6 that this claim should be dismissed. First, in respect of
7 certain of the damages claimed, namely increased Workers'
8 Compensation premiums totaling 320,000 dollars due to allegedly
9 unanticipated union requirements, 65,000 dollars in outstanding
10 employee medical bills, and 160,000 dollars of additional
11 interest and expenses for bridge loans, the record is clear
12 that LaborSource has not been damaged in respect of these
13 claims in the capacity in which it's suing, which is not on
14 behalf of its estate, rather in it's own capacity, because its
15 Chapter 7 case was a no asset case and the creditors who
16 asserted these claims against it did not receive a
17 distribution.

18 In addition, the claim that LaborSource has provided
19 no substantiation for its assertion of an unliquidated or
20 unquantified claim for allegedly providing DAS with the concept
21 of a job bank. As I've noted before, in addition to being an
22 unquantified claim, there's no explanation in the claim as to
23 what that concept was or what a job bank here was meant to
24 mean. Moreover, the assertion, even if there were sufficient
25 particularity to say that there would be an unliquidated claim

1 that might be subject to reconsideration once the claim was
2 liquidated, is refuted by the declaration of James Robins,
3 which is uncontroverted.

4 That leaves the claim by LaborSource for lost profits
5 and additional costs allegedly incurred and paid by it for
6 downtime or early termination and the like under the
7 agreement -- I'm sorry, or extrinsate to the agreement between
8 the parties. That agreement, I believe, is clear on its face
9 as to the parties' intentions. And, consequently, is not
10 subject to the admission of extrinsate evidence to contradict
11 its terms. See Cook v. Little Caesar Enterprises, Inc. 210
12 F.3d 653, 656 (6th Circuit 2000) which discusses and construes
13 Michigan law regarding the parol evidence rule. And I note
14 parenthetically that the parties appear to agree that Michigan
15 law would apply here as to the merits of the claim, and even if
16 they did not agree, given the location of the contract and its
17 performance, I would apply Michigan law.

18 The agreement between the parties is a purchase order
19 which they entered into following a bid submitted by
20 LaborSource which was accepted by DAS, and which incorporates
21 the bid as well as additional terms. The bid itself is clear
22 on its face that the labor provider, that is LaborSource, is to
23 be paid only for hours worked. There is no provision providing
24 for compensation for downtime or for changes in the labor
25 template. In fact, under Section 2.1 of the requirements for

1 the bid, it's provided that the template will change based on
2 volumes the manufacturing process product changes, etcetera.
3 This bid was incorporated in the purchase order which is
4 attached as an exhibit both to the proof of claim as well as to
5 the Robins Affidavit. That purchase order has a clear
6 provision providing that it sets forth the complete and final
7 agreement between buyer and seller and that no other agreement
8 in any way modifying any of set terms and conditions will be
9 binding upon the buyer, that is DAS, unless made in writing and
10 signed by buyer's authorized representative. The agreement
11 also incorporates specifically by reference the terms and
12 conditions of January 2001 which, as the agreement states, the
13 supplier has received a copy of. Those terms and conditions
14 are also in evidence and they provide for, among other things,
15 again, an integration provision requiring that any changes to
16 them be expressly agreed to in writing by DAS, that's found in
17 paragraph 1. And as set forth in paragraph 11, the buyer, in
18 addition to any other rights to terminate the contract, may
19 immediately terminate all or any part of the contract at any
20 time and for any reason by notifying the seller in writing and
21 limiting further the seller's sole and exclusive recovery
22 therefrom without regard to legal theory to claims that would
23 not include the type of claim asserted in this claim by
24 LaborSource for or related to the early termination of this
25 contract.

1 There is a provision in the terms and conditions,
2 paragraph 3, which states that the buyer may at any time
3 require seller to implement changes to the specifications or
4 design of the goods or to the scope of any services or work
5 covered by the contract and that buyer will equitably determine
6 any adjustment in price or delivery schedules resulting from
7 such changes, and that the parties will resolve any
8 disagreement arising out of such changes. There are two
9 responses to that provision here. The first is that the bid
10 and purchase order themselves more specifically put the
11 supplier on notice that such changes may or will occur,
12 therefore those more specific provisions would govern.

13 In addition, however, the parties did agree to alter
14 the terms of their agreement. Such alternation being set forth
15 in writing in a settlement and accommodation agreement dated
16 June blank 2004, in which Delphi agreed without any admission,
17 and, in fact, a no admission provision was contained in the
18 agreement, that it had any obligation to do so and was not
19 admitting any liability by entering into this agreement. But
20 nevertheless, Delphi agreed pursuant to the settlement
21 agreement to increase the amount that it would pay under the
22 purchase order in certain respects.

23 In addition, importantly, however, the parties in
24 their amendment and settlement agreement provided "neither the
25 purchase order nor this agreement create any obligation of

1 Delphi to purchase, obtain or pay for any minimum number of
2 hours of any personnel. And supplier and Delphi agreed that
3 Delphi is under no such obligation. In addition, nothing
4 contained in this agreement limits in any manner Delphi's right
5 to reduce Delphi's requirements of supplier or to terminate the
6 purchase order in accordance with its terms including without
7 limitation Delphi's termination right in accordance with
8 Section 13 of the Delphi terms and conditions January 2001,
9 which have been and remain incorporated in the purchase order
10 by reference." In addition, in paragraph 3 of the settlement
11 agreement "the supplier released Delphi of all claims arising
12 and relating in any way to the purchase order based upon acts
13 or occurrences at any time prior to the date of the settlement
14 agreement." Finally, the supplier, in paragraph 2, "ratified
15 and confirmed its obligations to provide the services in
16 accordance with terms of the purchase order, as amended, in
17 accordance with this agreement. And represented and warranted
18 to Delphi that the supplier had no offsets or defenses to the
19 obligation of supplier to perform under the purchase order, as
20 amended, in accordance with the agreement."

21 Consequently, it appears to me crystal clear that
22 consistent with the bid, the purchase order, the parties
23 reconfirmed in their amendment to the purchase order that their
24 contractual arrangement was a requirements contract and that
25 among other things Delphi had no obligation to pay for any

1 minimum number of hours to the supplier. And, of course, that
2 is the basis for the supplier's claim.

3 As set forth in the Little Caesar's case, the parol
4 evidence rule as applied in Michigan excludes the admission of
5 parol evidence where the party's intent that a written
6 instrument be the complete expression of their agreement is
7 clear on the face of the agreement. That is the case here, not
8 only based on the terms that I have read but also by the
9 integration provisions and no modification provisions of the
10 agreement which, again, the Little Caesar's case refers to as
11 barring parol evidence, see 210 F.3d at 656, 657. Such a
12 requirements contract is recognized as valid and enforceable in
13 or under Michigan law even if no requirements arose because of
14 cancellation or termination, see J&B Sausage Company v.
15 Department of Management and Budget, 2007 WL 28409, (Michigan
16 Court of Appeals January 4, 2007), as well as Teak Corporation
17 v. Dow Corning Corp., 962 F.2d 1119, 1126 (3d Circuit 1992) and
18 Neofotistos v. Harvard Brewing Company, 341 Mass. 684, 689
19 (1961) for other constructions of requirements contracts. The
20 only limitation on that rule is that the contracting party act
21 in good faith in respect of its requirements. However, the
22 evidence here does not show any absence of good faith by DAS.
23 Indeed, I don't believe an absence of good faith is alleged.
24 Moreover, the letter dated March 3, 2005 by Mr. Sharpless to Mr.
25 Robins states, among other things, perhaps there was nothing

1 that could have been done to prevent these events from
2 occurring from Delphi's perspective, that is the losses that
3 occurred because of the overall nature of the project. So I
4 conclude that Delphi acted in good faith and that its
5 requirements contract should be enforced pursuant to its terms.
6 And, in fact, it was performed according to its terms, there
7 being no dispute that Delphi has paid and performed all of its
8 obligations under the agreement.

9 LaborSource alleges that the 2004 amendment to that
10 agreement and the settlement agreement and amendment was a
11 contract of adhesion and therefore should be disregarded.
12 Again, except for the evidence in the record as set forth in
13 the whereas clauses in the 2004 amendment, that LaborSource was
14 experiencing financial difficulties, there's no other evidence
15 that DAS was acting in bad faith or in an unconscionable way in
16 not paying LaborSource an excess of the amounts that it had
17 agreed to pay LaborSource under the contracts. Consequently, I
18 conclude that the amendment and settlement agreement is not a
19 contract of adhesion and is enforceable. And further, that it
20 is merely a confirmation except for the changes to the amounts
21 that Delphi would pay, those changes being to LaborSource's
22 benefit of the underlying requirements nature of the contract
23 between the parties.

24 Finally, I note that even if there were ambiguities
25 or other factors that would override the parol evidence rule,

1 there is no evidence in the record to establish that Delphi, as
2 contended in the claim, mislead or defrauded LaborSource
3 outside of the terms of the contract as to what it would be
4 paid and what its profits would be under the contract. To the
5 contrary, the only evidence in the record on this issue is that
6 set forth in the Robins declaration and the Hudson declaration,
7 both of which establish that there were no such
8 misrepresentations for fraudulent inducement. So for those
9 reasons, the claim should be disallowed in full.

10 MR. LYONS: Thank you, Your Honor. We'll submit an
11 order for Your Honor's review.

12 THE COURT: Okay.

13 MR. LYONS: To that effect.

14 THE COURT: Thank you.

15 MR. LYONS: Your Honor, that's the last item on the
16 agenda, we have nothing further.

17 THE COURT: Okay. Thanks a lot.

18 MR. LYONS: Thank you, Your Honor.

19 MR. ALTUS: Thank you, Judge.

20 THE COURT: Okay.

21 (Proceedings concluded at 11:05 a.m.)
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I N D E X

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C E R T I F I C A T I O N

I, Esther Accardi, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Signature of Transcriber

March 5, 2007_____
Date

typed or printed name

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